IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1032 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIRLA VXL LIMITED

Versus

JAMNAGAR MUNICIPAL CORPN.

Appearance:

1. Special Civil Application No. 1032 of 2004

MR MJ THAKORE with MR SANDIP SINGHI for
SINGHI & CO for Petitioner No. 1

MR BB NAIK for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/08/2004

ORAL JUDGEMENT

RULE. Mr.B.B.Naik, learned advocate, appears and waives service of rule on behalf of respondent Nos.1 & 2. With the consent of the respective parties, the matter is taken up for final hearing today.

2. Heard Mr.M.J.Thakore, learned Senior Advocate with Mr.Sandip Singhi, learned advocate for the petitioner and Mr.B.B.Naik, learned advocate for the respondents.

3. In this petition under Article 226 of the Constitution of India, the petitioner - Company has challenged the legality and validity of the notice/order dated 13-01-2004 issued by the Jamnagar Municipal Corporation by which the petitioner is directed to make payment of Rs.3,72,81,781/- towards municipal tax inclusive of property tax, education cess, etc. for the period between 10-06-1981 to 31-03-2004.

4. Few facts are necessary for determination of the present petition.

4.1 The petitioner is situated within the local limits of Jamnagar Municipality. A notification dated 20-06-1981 came to be issued for including various areas including the area of the petitioner within the Municipal limits of Jamnagar Municipality. A petition being Special Civil Application No.1976 of 1980 came to be filed before this Court challenging the legality and validity of the aforesaid notification in which interim order came to be issued by this Court restraining inclusion of areas of the petitioner within the limits of Jamnagar Municipality.

4.2 It is the case of the petitioner that the aforesaid petition came to be withdrawn considering the assurance given by the respondents that they would consider sympathetically the granting of exemption from various taxes at least for a period of 5 years. It is required to be noted that the Corporation for City of Jamnagar came to be constituted vide notification dated 30-10-1981 w.e.f. 06-10-1981.

4.3 It seems that thereafter Special Civil Suit No.20 of 1984 came to be filed by the petitioner in the Court of learned Civil Judge (S.D.), Jamnagar challenging that Jamnagar Municipality has not followed the procedure prescribed by law for assessment and without inviting objections. It is the case of the petitioner that interim injunction was partly granted in favour of the petitioner by restraining the respondents from recovering any property tax from the petitioner on the condition that the petitioner shall extend full co-operation to the respondent for assessing the tax and that all the parties shall expedite the procedure of assessment and submit its

report before the trial Court on or before 31-01-1987. It seems that the said Special Civil Suit No.20 of 1994 came to be dismissed on 18-04-2001 and interim injunction granted earlier came to be vacated.

4.4 In the year 2001 by communication dated 05-05-2001 the petitioner was asked to make payment of Rs.96,85,837/- for dues towards property tax, education cess, etc. till 31-03-2000. By communication dated 05-05-2001 in fact the petitioner was directed to pay amount of Rs.1,59,35,837/- being the amount towards general tax, education cess and conservancy tax and deducting amount of Rs.62,50,000/- paid by the petitioner between 12-03-1987 and 18-05-2000, recovery was sought for an amount of Rs.96,85,837/-. As there was some dispute with regard to the actual amount the petitioner vide letter dated 23-05-2001 approached the respondents stating that as per the settlement liability of property tax was arrived at Rs.87,29,445/- and that the said amount was to be paid in 15 installments and first installment being agreed to be paid of Rs.10,00,000/-. It is the case of the petitioner that all 15 installments were duly paid by the petitioner upto 31-10-2002 and the entire amount which was required to be paid pursuant to the communication dated 05-05-2001 has been paid. There is some dispute with regard to some amount, according to the petitioner, upto 31-03-2000 amount of Rs.1,49,35,837/- was due and payable and as per the Corporation Rs.1,59,35,837/- was due and payable upto 31-03-2000. It seems that the petitioner has paid an amount which comes to Rs.1,49,79,445/- and the learned advocate for the petitioner has submitted that the balance amount subject to settlement of account will be paid by the petitioner within 15 (fifteen) days from today.

4.4 It is the case of the petitioner that even the respondents have also by their communication dated 04-10-2002 agreed to accept the aforesaid amount by way of installments along with a bill for the period from 2000-2001, 2001-2002 and for the period between 01-04-2002 to 30-09-2002. It is the case of the petitioner that they have paid the entire amount general tax, education cess etc. upto 30-09-2002.

4.5 In spite of the aforesaid facts and circumstances of the case, by notice dated 13-01-2004 the respondents have called upon the petitioner to make payment of Rs.3,72,81,781/= towards general tax, education cess, etc. till 31-03-2004 to be paid within 15 days from the date of receipt of notice. Being aggrieved and

dissatisfied with the said notice dated 13-01-2004 the petitioner has preferred the present petition under Article 226 of the Constitution of India.

5. Mr.M.J.Thakore, learned Senior Advocate appearing for the petitioner, has vehemently submitted that before raising demand and communication/notice dated 13-01-2004, no opportunity of hearing was given to the petitioner. Mr.Thakore submitted that in fact whatever was due and payable by the petitioner upto 30-09-2002 is paid by the petitioner. He further submitted that after 30-09-2002 there is no bill issued in favour of the petitioner, and as and when bill is issued after assessment, the same will be paid by the petitioner. Mr.Thakore further submitted that on what basis the Municipal Corporation has directed to pay amount of Rs.3,72,81,781/= is not known to the petitioner. He has further submitted that there is no break up given by the Corporation in the notice dated 13-01-2001. Mr.Thakore also submitted that if break up would have been given and/or an opportunity of hearing would have been given, the petitioner could have pointed out the Corporation that upto 30-09-2002 nothing is required to be paid by the petitioner. He has further submitted that so far as alleged recovery for the period from 10-06-1981 till 31-03-2004, the petitioner is not served with bill and no assessment is done and/or the petitioner is not informed about the same. However, he has submitted that impugned notice/order dated 13-01-2004 is against the principles of natural justice and, therefore, the same is required to be quashed and set aside.

6. In response to the notice issued by this Court Mr.B.B.Naik, learned advocate, appears on behalf of the Corporation and files an affidavit-in-reply in which break up is given at Page 70 along with the affidavit-in-reply.

7. It seems that the aforesaid amount of Rs.3,72,81,781/= is calculated by the respondent considering the period 10-06-1981 till 31-03-2004. Considering this, Mr.Thakore has submitted that so far as period upto 30-09-2002 is concerned, they have already made payment and nothing is due and payable by them. Be that it may, at present this Court has not considered this petition on merits. In view of the fact that the order/demand notice dated 13-01-2004 itself is against the principles of natural justice this Court proposes to disposed of the present petition by quashing and setting aside the said notice dated 13-01-2004.

8. Accordingly the impugned demand notice dated 13-01-2004 is hereby quashed and set aside as the same is against the principles of natural justice, no proper procedure and proceedings are initiated before issuance of impugned demand notice. It will be open for the respondents to initiate proceedings with regard to recovery and/or any other proceedings in accordance with law after giving an opportunity to the petitioner. It is made clear that this Court has not expressed any opinion on merits. The impugned notice dated 13-01-2004 is quashed and set aside only on the ground that the same is issued without any opportunity of hearing to the petitioner and the same is against the principles of natural justice.

9. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

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